# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Criminal Appeal No. 304 of 2000.**

**Date of decision:22.11.2007.**

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**State of H.P. .. ..Appellant**

**Versus**

**Manohar Lal and others .. ..Respondents**

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***Coram:***

**The Hon'ble Mr. Justice Deepak Gupta, J.**

**Whether approved for reporting ? No**

**For the appellant: Mr.J.S.Guleria, Law Officer.**

**For respondents: Mr.Lovneesh Kanwar, Advocate.**

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**Deepak Gupta, J.(oral)**

The present appeal by the State under Section 378 of the Code of Criminal Procedure has been filed against the judgment dated 15.9.1999 passed by learned Addl. Chief Judicial Magistrate, Sarkaghat, District Mandi, H.P. in Case No.38-I/96 (34-III/96) whereby he has acquitted the accused of having committed offence under Section 61(i) (a) of the Punjab Excise Act, 1914 as applicable to the State of H.P. (hereafter referred to as the Act).

Prosecution case in a nutshell is that on 3.6.1995 ASI Kamal Nain of Police Station Sarkaghat received secret information that some persons were transporting illicit liquor in a tractor No.HID 8759. He associated two independent witnesses Kishan Chand and Anil Kumar as also Sh.J.L. Sharma, Excise and Taxation Inspector with the search and seizure operations. The raiding party reached a place called Shanga-da-proh. A

tractor trolley was found coming on the road and the same was chased. It is alleged that Hukam Chand was driving the tractor. The tractor was apprehended. In the meantime two persons got off the tractor and ran away into the jungle. The tractor driver Hukam Chand along with the tractor wwere apprehended. 11 boxes of country liquor containing 12 bottles each were recovered from the tractor. It is further the prosecution case that Hukam Chand accused disclosed that two other accused were Manohar Lal and Basant Singh. Accordingly FIR was lodged and investigation conducted. Samples taken from the bottles were sent to Chemical Examiner at Kandaghat for analysis. The samples were found to be of country liquor. On completion of investigation police filed a report against all the accused persons who were summoned. They were charged for having committed an offence under Section 61(i) (a) of the Act.

In Court, the prosecution version was supported only by PW-2 J.L. Sharma and PW-5 ASI Kamal Nain. They however could give no explanation as to why accused Manohar Lal and Basant Singh whose names were allegedly disclosed by Hukam Chand were not apprehended immediately. The two independent witnesses allegedly associated with the raid, namely, Kishan Chand and Anil Kumar were not examined by the prosecution despite repeated opportunities granted to it. It also stands proved on record that the tractor did not belong to Hukam Chand. How and in what capacity Hukam Chand was

driving the tractor has not been proved on record. The police has failed to investigate the matter in its right perspective. No evidence has been led to show as to from where the liquor had been purchased and by whom or where it was being taken. The source of secret information has not been disclosed. In fact the case has been conducted in a very shoddy manner by the prosecution. Only one box of liquor from which samples have been taken was produced and exhibited in the Court and with regard to other 10 boxes no explanation has been given as to what had happened to those 10 boxes. The prosecution has failed to explain as to what happened to the case property. The learned trial Court has rightly acquitted the accused on account of the non-examination of the independent witnesses and has rightly held that in view of the shoddy investigation no reliance can be placed on the prosecution evidence. There is no error in the judgment of the trial Court warranting interference.

In view of the above discussion, the appeal is without any merit and is accordingly dismissed. Bail bonds furnished by the accused are discharged.

**November 22, 2007.** **( Deepak Gupta ),**
**PV** **Judge**